U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: Los Angeles Date: OCT 27 2004

IN RE: Applicant: [redacted]

PETITION: Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), *amended by* LIFE Act Amendments, Pub. L. 106-554. 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, you no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case.

Robert P. Wiemann, Director
Administrative Appeals Office

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the District Director, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The district director determined that the applicant had not demonstrated that she had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988. The district director further determined that the applicant was inadmissible under section 212(a)(2)(A)(i)(II) of the Immigration and Nationality Act (INA), because she had been convicted of a crime involving moral turpitude in the United States. Therefore, the district director concluded the applicant was ineligible for permanent resident status under the LIFE Act and denied the application.

On appeal, the applicant indicates that she has submitted sufficient documentation establishing continuous residence in the U.S. from prior to January 1, 1982 through May 4, 1988.The applicant submits copies of new documents in support of her claim of residence.

An alien must establish that he is admissible to the United States as an immigrant, except as otherwise provided under section 245A(d)(2) of the INA. Section 1140(c)(2)(D)(i) of the LIFE ACT.

An alien is inadmissible if he or she has been convicted of a crime involving moral turpitude (other than a purely political offense), or an attempt or a conspiracy to commit such crime. Section 212(a)(2)(A)(i)(I) of the INA. Pursuant to 8 C.F.R. § 245a.18(c)(2), grounds of inadmissibility under this section of the INA, (crimes involving moral turpitude) may *not* be waived.

The most commonly accepted definition of a crime involving moral turpitude is an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellow men or to society in general, contrary to the accepted and customary rule of right and duty between man and man. *Jordan v. DeGeorge*, 341 U.S. 223, reh'g denied, 341 U.S. 956 (1951).

A review of the record reveals that the applicant was convicted of attempted theft, a misdemeanor violation of section 664-484(A) of the California Penal Code on March 16, 1990. The applicant was sentenced a pay a fine and penalty of $493.50 and placed on summary probation for a period of one year. A conviction for theft, or an attempt thereof, under this section of the California Penal Code is considered to be a conviction of a crime involving moral turpitude. *See Jordan v. De George, supra*; *Matter of Squires*, 17 I. & N. Dec. 561 (BIA 1980); *Matter of Flores*, 17 I. & N. Dec. 225 (BIA 1980); *Matter of Acosta*, 14 I. & N. Dec. 338 (BIA 1973); *Matter of Garcia*, 11 I. & N. Dec. 521 (BIA 1966); *Matter of L-*, 5 I. & N. Dec. 705 (BIA 1954).

While the district director was correct in concluding that the applicant had been convicted of a crime involving moral turpitude, the director did not cite the correct section of law, section 212(a)(2)(A)(i)(I) of the INA, but instead cited that section of the INA pertaining to convictions for controlled substances at section 212(a)(2)(A)(i)(II), in reaching this conclusion. In addition, the director did not consider whether the applicant was still considered to be inadmissible under the following exceptions contained at section 212(a)(2)(A)(ii) of the INA:

> (ii) Exception.-Clause (i)(I) shall not apply to an alien who committed only one crime if-

> (I) the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of application for a visa or other documentation and the date of application for admission to the United States, or
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> (II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

In this case, the applicant was born on June 10, 1963 and convicted of a crime involving moral turpitude at the age of 26 on March 16, 1990. Therefore, the exception contained at section 212(a)(2)(A)(ii)(I) of the INA does not apply to the applicant as she was over 18 years of age at the time of her conviction. However, a review of the California Penal Code at section 664-490, reveals that the applicant's conviction for misdemeanor attempted theft is considered to be a conviction for petty theft and is punishable by fine not exceeding one thousand dollars ($1,000.00), or by imprisonment in the county jail not exceeding six months, or both. Clearly, the exception contained at section 212(a)(2)(A)(ii)(II) of the INA does apply to the applicant as the crime for which she was convicted, misdemeanor attempted theft, has a maximum sentence of six months of confinement and the applicant was not imprisoned for any length of time. As the exception contained at section 212(a)(2)(A)(ii)(II) of the INA specifically applies to the applicant, she cannot considered to be inadmissible under section 212(a)(2)(A)(i)(I) of the INA, despite the fact that she has been convicted of a crime involving moral turpitude. Therefore, the applicant has overcome this particular basis of the denial.

An applicant for permanent resident status must establish entry into the United States before January 1, 1982 and continuous residence in the United States in an unlawful status since such date and through May 4, 1988. 8 C.F.R. § 245a.11(b).

An applicant for permanent resident status under section 1104 of the LIFE Act has the burden to establish by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, is admissible to the United States and is otherwise eligible for adjustment of status under this section. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.12(e).

When something is to be established by a preponderance of the evidence it is sufficient that the proof establish that it is probably true. *See Matter of E-- M--*, 20 I. & N. Dec. 77 (Comm. 1989).

Although the regulations provide an illustrative list of contemporaneous documents that an applicant may submit, the list also permits the submission of affidavits and any other relevant document. *See* 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The applicant is a class member in a legalization class-action lawsuit and as such, was permitted to previously file a Form I-687, Application for Temporary Resident Status Pursuant to Section 245A of the Immigration and Nationality Act (INA) on or about Aril 10, 1991. At part #33 of the Form I-687 application where applicants were asked to list all residences on the United States from the date of their first entry, the applicant provided a listing of three addresses for the period from November 1981 until the date the application was submitted. In support of her claim of continuous residence in this country since November 1981, the applicant submitted three affidavits of residence, two employment letters, a letter from a bank official, a copy of a California State Identification Card, and a copy of student identification card. The testimony within the affidavits of residence and employment letters is consistent with the applicant's listing of her places of residence and employment on the Form I-687 application. The applicant has subsequently provided additional evidence, employment records and bills of sale, to further corroborate her claim of residence on appeal.

The district director has not established that the information contained in the applicant's supporting evidence was inconsistent with the claims made on the application, or that it was false information. As stated on *Matter of E--M--*, *supra*, when something is to be established by a preponderance of evidence, the applicant only has to establish that the proof is probably true. That decision also points out that, under the preponderance of evidence standard, an application may be granted even though some doubt remains regarding the evidence. The documents that have been furnished may be accorded substantial evidentiary weight and are sufficient to meet the applicant's burden of proof of residence in the United States for the requisite period.

The documentation provided by the applicant supports by a preponderance of the evidence that the applicant satisfies the statutory and regulatory criteria of entry into the United States before January 1, 1982, as well as continuous unlawful residence in the country during the ensuing time frame of January 1, 1982 through May 4, 1988, as required for eligibility for legalization under section 1104(c)(2)(B)(i) of the LIFE Act.

Accordingly, the applicant's appeal will be sustained. The district director shall continue the adjudication of the application for permanent resident status.

ORDER: The appeal is sustained.